

Service Date: March 22, 2006

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER Of the Petition)	UTILITY DIVISION
of the City of Great Falls and)	
Electric City Power, Incorporated for)	DOCKET NO. N2006.1.11
Amendment of ARM 38.5.8005)	ORDER NO. 6721

ORDER DENYING PETITION FOR AMENDMENT OF RULES

Background

1. On January 30, 2006, the City of Great Falls and Electric City Power, Incorporated (Petitioners) filed, pursuant to § 2-4-315, MCA, a petition for amendment of Public Service Commission (Commission) administrative rule 38.5.8005 (Petition). ARM 38.5.8005 provides, in pertinent part:

- a. Licensed suppliers serving residential and small business (under 20 kW) customers must maintain a standard service offer characterized by:
 - i. service contracts no longer than three months except as provided in (3); . . .
- b. The standard service offer may include a budget/fixed monthly bill option, in which case the contract term may extend no more than 12 months. . . .

Adoption of the amendments proposed by Petitioners would remove limitations on the length of standard service offers.

2. The Commission issued a Notice of Petition for Amendment of Rules – Notice of Opportunity to Comment on Petition (Notice) on February 10, 2006. On March 2, 2006, the Montana Consumer Counsel filed comments stating that it did not support the Petition (MCC Comments).¹ On March 10, 2006, the Petitioners filed Reply Comments (Reply)

¹ On March 3, 2006, an employee of the City transmitted a comment from the Board of Directors of Electric City Power and a comment from a City of Great Falls Commissioner to a member of the Commission staff. Both comments supported the Petition. The comments

in support of the Petition.

3. The Petitioners assert that the “fixed, three-month term . . . is arbitrary and does not allow for sufficient flexibility in configuring a small customer supply program.” Petition at p. 2. Petitioners also assert that “. . . longer or more tailored contract terms would serve the objectives of the Petitioners in securing a stable revenue stream for purposes of financing plant and improvements” Petition at p. 2. Finally, Petitioners suggest that an electric supplier can “avoid the ‘Standard Service Offer’ requirement by maintaining a standard service offer that is economically unattractive, while at the same time offering its more economically attractive products under the ‘other services’ language in [ARM] 38.5.8005(5)” and suggest that a rule which provides such an alternative should be amended or repealed. Petition at pp. 2-3.

4. The MCC argued that it initially supported a shorter contract term to facilitate customer switching. MCC Comments at p. 2. The MCC also stated, “Lengthening contract terms appears to be counter to the purpose of competition and reduces the benefits the customers might be able to obtain from the ability to choose among suppliers. MCC Comments at p. 2.

5. In reply, the Petitioners argue, “. . . no meaningful competition has ever materialized” Reply at p. 2. Petitioners also assert they are seeking to shift the risk of supply arrangements from the supplier to the customers. Reply at 2.

Discussion, Findings and Decision

6. The Commission first proposed a rule that required standard service offer to be characterized by “a month-to-month service contract that the consumer may terminate at the end of any billing cycle after providing the supplier at least 14 days notice.” Notice of Public Hearing on the Proposed Adoption of Electricity Supplier Licensing and Reporting Rules, 8 MAR 1124 (1998) (proposed April 30, 1998). In response to a comment that the proposed minimum term may strain the distribution service provider’s administration of the service, the Commission modified the rule to allow for a longer term. Notice of Adoption, 13 MAR 1941 (1998).

7. In adopting the rule the Commission acknowledged that prices for the standard service offer may be higher than for other service offers. *Id.* The Commission stated,

did not comply with the requirements of the Notice but have been included in the record.

“The standard service offer was not designed to be the cheapest option but one which has familiar characteristics and low risk for consumers.” *Id.*

8. Nothing in ARM 38.5.8005 prevents an electricity supplier from offering small customers a contract having a term of longer than three months or having a lower price than the standard service offer. In approving a small customer electricity supply program, the Commission may authorize provision of a service, other than standard service offer, with a contract term longer than three months.

9. The legislature mandated that the Commission establish rules to “protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices. § 69-8-403(6), MCA. The legislature also empowered the Commission to require electricity suppliers that provide electricity supply service to small customers to provide a standard service offer that ensures those customers have access to affordable electricity. § 69-8-404(3), MCA.

10. The Commission finds that ARM 38.5.8005 protects consumers from anticompetitive and abusive practices.

11. The record in this proceeding is not sufficient to establish that ARM 38.5.8005 should be amended in the manner requested by the Petitioners.

12. The Commission has before it Docket No. D2005.7.110, In the Matter of the Application of the City of Great Falls to Operate a Limited Small Commercial and Residential Electricity Supply Program, in which the Petitioners have asked the Commission to approve a small customer electricity supply program. The Petitioners have sought to incorporate the evidence and argument in Docket No. D2005.7.110 in this docket. Petition at p. 2. If the evidence and record in Docket No. D2005.7.110 establish a benefit from amending ARM 38.5.8005, the Commission may initiate an appropriate rulemaking proceeding at that time.

Conclusions of Law

1. Petitioners are interested parties and may petition the Commission to amend an administrative rule. § 2-4-315, MCA.

2. The Commission has complied with the requirements of § 2-4-315, MCA, in responding to the Petition.

3. Based on the evidence before it, the Commission may lawfully deny the Petition.

Order

1. The Petition for Amendment of ARM 38.5.8005 is denied.

DONE AND DATED this 14th day of March, 2006 by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

GREG JERGESON, Chairman

BRAD MOLNAR, Vice Chairman

DOUG MOOD, Commissioner

ROBERT H. RANEY, Commissioner

THOMAS J. SCHNEIDER, Commissioner

ATTEST:

Connie Jones
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.